

# EQUALITY ACT 2010

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Enforcement**

#### *Chapter 4: Equality of terms*

#### *Section 127: Jurisdiction*

##### **Effect**

413. This section sets out the types of cases relating to equality of terms which employment tribunals have jurisdiction to hear. Tribunals may hear and decide claims (including those referred to them by courts) involving equality in the rules of occupational pension schemes and claims relating to an equality clause, including claims relating to pregnancy and maternity equality.
414. A responsible person (as defined in section 80, such as an employer, or a pension scheme trustee or manager) can also ask a tribunal for a declaration of each party's rights in relation to a dispute or claim about an equality clause or rule.
415. Members of the armed forces must bring a complaint under service complaints procedures before they can bring a claim to a tribunal.
416. This section does not alter any jurisdiction the courts or the sheriff have in relation to an equality clause or rule.

##### **Background**

417. This section is designed to replicate the effect of provisions in previous legislation.

##### **Example**

- An employment tribunal can hear claims brought by an employee, office-holder or member of the armed forces in relation to a breach of an equality clause and in relation to breach of an equality rule concerning a pension scheme.

#### *Section 128: References by court to tribunal, etc.*

##### **Effect**

418. The Act does not prevent the civil courts from considering a contractual claim relating to an equality clause or rule. However, this section gives a court the power to strike out such a claim if it would be more convenient for a tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.

## **Background**

419. Employment tribunals have the specialist knowledge and procedures to handle claims relating to equality of terms and this section gives a court power to refer such issues to a tribunal. This section replaces similar provisions in previous legislation.

## **Example**

- An employer sues an employee in a civil court for breach of her employment contract. In response, the employee counterclaims for breach of an equality clause. The court decides to refer the counterclaim to an employment tribunal and postpones the case until the tribunal's decision.

## **Section 129: Time limits**

### **Effect**

420. A person who wishes to bring a claim for breach of an equality clause or rule or to apply for a declaration about the effect of such a clause or rule must normally do so within six months of the end of the employment contract. In certain circumstances, this section gives a claimant more time to make a claim. This applies where the employer conceals certain information from the claimant or where the claimant has an incapacity (as defined in section 141). Members of the armed forces have an additional three months in which to bring a claim because they must first make a complaint under the service complaint procedures.

## **Background**

421. This section replaces similar provisions in previous legislation. Time limits provide certainty by requiring claims to be brought within specified periods and also take into account factors which may affect a claimant's ability to assert his or her claim.

## **Example**

- A former member of the armed forces wishes to bring a claim about her terms of service. She first makes a service complaint and then brings a claim for breach of an equality clause in an employment tribunal. The claim for breach of an equality clause must be brought in an employment tribunal within nine months after her period of service ended.

## **Section 130: Section 129: supplementary**

### **Effect**

422. Under section 129, the time limit for bringing a claim for breach of an equality clause is six months (nine months for members of the armed forces) from the date on which employment ended in a standard case. Different time limits apply to non-standard cases. This section defines what is not a standard case.

423. In a stable work case, a series of fixed- or short-term contracts and breaks between contracts is treated as a continuing single contract. In a standard case, the time limit would start at the end of the contract of employment. In a stable work case, the time limit only begins to run when the stable working relationship ends.

424. In a concealment case, the employer deliberately conceals relevant information from the employee. The time limit starts to run when the employee discovers, or could reasonably have discovered, the information.

425. In an incapacity case, the appropriate time limit will start to run when the incapacity ends. Section 141 sets out when a person has an incapacity.

426. The section makes similar provisions for claims by members of the armed forces and in relation to occupational pension schemes.

### **Background**

427. This provision replaces similar provisions in the previous legislation.

### **Examples**

- A woman's employment ends due to mental health problems which result in her temporary loss of capacity to make decisions for herself. She could make a claim for breach of an equality clause to an employment tribunal but is not well enough to do so. The six month time limit will start when she recovers sufficiently to make a claim.
- A woman suspects that her male colleagues who do the same work are better paid. Her employer reassures her that she and her colleagues get the same salary but he deliberately does not tell her that the men also receive performance bonuses under their contracts. Her male colleagues refuse to discuss their pay with her. The woman only discovers the discrepancy between her pay and the men's when one of the men tells her 18 months after she ceases employment. Within six months, she makes an equal pay claim to a tribunal based on the value of the bonus payments she would have received if her contract had provided for them. Although the woman's claim is made more than six months after her employment ends, she shows that her employer deliberately misled her into believing that her salary was the same as the men's. She had no way of discovering the truth earlier. Her claim can proceed as a concealment case.

### ***Section 131: Assessment of whether work is of equal value***

#### **Effect**

428. Where an employment tribunal has to decide if the work of a claimant and comparator are of equal value, this section gives it the power to require an independent expert, designated by the Advisory, Conciliation and Arbitration Service, to prepare a report on the matter.
429. Unless the tribunal withdraws its request for a report (in which case it can ask the expert to give it any documents or other information the expert has to help it make a decision) it must wait for the expert's report before deciding whether the work is of equal value.
430. If there has been a job evaluation study in relation to the work involved and the study finds that the claimant's work is not of equal value to the work of the comparator, the tribunal is required to come to the same decision unless it has a good reason to suspect that the study is discriminatory or unreliable.

### **Background**

431. This provision replaces similar provisions in previous legislation.

### **Example**

- A woman claims that her job is of equal value to that of a male comparator. The employer produces a job evaluation study to the tribunal in which the woman's job is rated below her comparator's job. The employer asks the tribunal to dismiss the woman's claim but the woman is able to show that the study is unreliable because it is out of date and does not take account of changes in the jobs resulting from new technology. The tribunal can disregard the study's conclusion and can proceed to decide if the work of the claimant and the work of the comparator are of equal value.

### **Section 132: Remedies in non-pensions cases**

#### **Effect**

432. If a claim for breach of an equality clause (other than in relation to a pension scheme) succeeds, the court or employment tribunal can make a declaration clarifying what the rights of the parties to the claim are.
433. The court or tribunal can also order the employer to pay the claimant arrears of pay or damages. The period used for calculating arrears depends on the type of case. There are different periods for claims brought in England and Wales and in Scotland. The basic period in relation to England and Wales is six years from the date a claim is made. In relation to Scotland, the period is five years. Special provision is made for claims involving concealment and/or incapacity (as set out in section 135).

#### **Background**

434. This provision replaces similar provisions in previous legislation.

#### **Example**

- A woman successfully establishes that her work is the same as her male comparator's and that in addition to a discrepancy between her pay and that of her male comparator, she has been denied access to the benefit of a company car. The claimant is entitled to claim the difference in pay going back up to six years from the date of the claim. She is also entitled to monetary compensation for not having had the use of a company car.

### **Section 133: Remedies in pensions cases**

#### **Effect**

435. This section allows an employment tribunal to declare that in cases where an equality rule or equality clause has been breached in relation to:
- scheme membership, the complainant is entitled to be admitted to the scheme from a date specified by the tribunal, although the date cannot be earlier than 8 April 1976;
  - scheme rights, the complainant is entitled to have any rights which would have accrued under the scheme secured from a date specified by the tribunal, although the date cannot be earlier than 17 May 1990.
436. However, the section prevents a tribunal ordering an award of compensation to the complainant.

#### **Background**

437. This section replicates requirements in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.
438. The restrictions on dates derive from judgments of the European Court:
- for scheme membership: 8 April 1976, the date of the Court's judgment in *Defrenne v Sabena* ((C 43/75) [1981] 1 All ER 122; [1976] ECR 455). The Court, in holding that the principle of equal pay was directly effective, held that what was Article 119 of the Treaty of Rome (now Article 157 of the Treaty on the Functioning of the European Union) should not be applied to periods of service before the judgment.
  - for scheme rights: 17 May 1990, the date of the Court's judgment in *Barber v Guardian Royal Exchange Assurance Group* ((C 262/88)[1991] 1 QB 344; [1990] ECR I-1889), which established that occupational pensions were pay for the purposes of what was Article 119 of the Treaty of Rome.

***Section 134: Remedies in claims for arrears brought by pensioner members***

**Effect**

439. This section allows a court or an employment tribunal to require compensation to be paid to a pensioner member for a breach of an equality clause or rule in relation to an occupational pension scheme and sets out the period for which arrears may be awarded for different types of cases. In a standard case in England and Wales, the period is six years before the date when a claim is made. Different periods apply to cases brought in England and Wales and to cases brought in Scotland. Special provision is made for claims involving concealment and/or incapacity (as set out in section 135).

**Background**

440. This section replicates requirements previously in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.

***Section 135: Supplementary***

**Effect**

441. The amount an employment tribunal can award a successful claimant is affected by how far back in time it can go in making its calculation. The type of case which is before the tribunal determines this period. This section defines the different types of cases.

**Background**

442. This section replicates the effect of similar provisions in previous legislation.